

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

NOE DIAZ)
)
)
a.k.a. NOE DIAZ-AVILA)
a.k.a. NOAH)
)
)
v.) 1:11-cv185/1:10-cr-97
) *Chief Judge Curtis L. Collier*
UNITED STATES OF AMERICA)

MEMORANDUM

Noe Diaz (“Diaz”) filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Criminal Court File No. 23). The government filed a motion requesting an extension of time in which to file a response (Criminal Court File No. 27) and Diaz filed a motion to withdraw his § 2255 motion (Criminal Court File No. 28). The Court reserved ruling pending a submission of Diaz’s sworn statement of his understanding of the consequences of dismissing his § 2255 motion. Presently before the Court is Diaz’s affidavit in support of his motion to withdraw his 28 U.S.C. § 2255 motion (Crim. Court File No. 30).

Diaz has filed his affidavit in support of his request to withdraw his § 2255 motion under penalty of perjury stating the following:

I knowingly, voluntarily and intelligently with the full understanding of the potential consequences, [sic] of withdrawing my section 2255, and further affirm and understand the dismissal will be with prejudice and that the one-year statute of limitations applicable to § 2255 bars defendant from filing another § 2255.

(Criminal Court File No. 30).

Rule 12 of the Rules Governing Section 2255 Proceedings for the United States District Courts directs the Court to apply the Federal Rules of Civil Procedure to this motion since this section does not specify the procedure for resolving this motion. Accordingly, Rule 41(a)(2) of the

Federal Rules of Civil Procedure provides for voluntary dismissal of an action at a plaintiff's request by court order. Therefore, for the foregoing reasons Diaz's motion to withdraw his § 2255 motion is **GRANTED** (Court File No. 28). *See* Rule 41(a)(2). Accordingly, Diaz's motion filed pursuant to 28 U.S.C. § 2255 is **DISMISSED WITH PREJUDICE** (Criminal Court File No. 23).

The Government's motion for an extension of time in which to file a reply is **DENIED AS MOOT** (Criminal Court File No. 27).

SO ORDERED.

ENTER:

/s/
CURTIS L. COLLIER
CHIEF UNITED STATES DISTRICT JUDGE